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Kevin Smith
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court of appeals and
tax court

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

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No. 34A02-0709-PC-791

Appellee-Respondent.

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D01-0507-FC-272

April 14, 2008

BAKER, Chief Judge

Appellant-petitioner Ryan Roberts appeals the trial court's denial of his motion requesting additional jail time credit. Finding that we do not have jurisdiction over this appeal, we dismiss.

On February 20, 2003, Roberts was sentenced to twenty-five years imprisonment with credit for 570 days, the period of time during which he was incarcerated before being sentenced. On June 12, 2007, Roberts filed, among other things, a pro se motion for jail time credit, which the trial court denied. On June 25, 2007, Roberts filed a second pro se motion for jail time credit, which was also denied. On August 20, 2007, Roberts filed a pro se motion to amend abstract of judgment, seeking the same relief requested by his prior motions for jail time credit, which was also denied. On September 4, 2007, Roberts filed a notice of appeal. On October 2, 2007, Roberts filed a motion for permission to file a belated notice of appeal, which the trial court denied on the same day.

A defendant in a criminal case may initiate an appeal from a final judgment denying him credit towards his sentence by filing a notice of appeal within thirty days of the entry of the judgment or order of which he complains. Hancock v. State, 786 N.E.2d 1142, 1143 (Ind. Ct. App. 1993); Ind. Appellate Rule 9(A)(1). The right to appeal is forfeited if the notice of appeal is untimely unless the defendant has secured permission from the trial court to file a belated appeal pursuant to Indiana Post-Conviction Rule 2. Hancock, 786 N.E.2d at 1143; App. R. 9(A)(5).

Roberts concedes that the relief he sought in his August 20, 2007, motion to amend abstract of judgment is the same request that the trial court had already denied twice on June 18 and June 26, 2007. Appellant's Br. p. 3. Thus, Roberts was required to

file his notice of appeal within thirty days of the first denial—at the latest, by July 25, 2007.¹ Roberts did not file his notice of appeal until September 4, 2007, and had not secured permission to file a belated notice of appeal before doing so. Even more compelling, assuming that the trial court’s October 2, 2007, order denying Roberts’s request to file a belated notice of appeal pertains to the very appeal we are now addressing, it is apparent that we are without jurisdiction to consider Roberts’s appeal and we hereby dismiss it.

Appeal dismissed.

RILEY, J., and ROBB, J., concur.

¹ If we construe Roberts’s June 26, 2007, motion for jail time credit as a motion to correct error, then his notice of appeal would have been due on July 25, 2007. App. R. 9(A)(1).